S.B.CIVIL WRIT PETITION NO.5756/1993

Devendra Kumar Dubey
v.
State of Rajasthan & Ors.

Date of Order :: 5th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.K.Malik, for the petitioner.
Mr. B.L.Tiwari, Dy. Government Advocate.
Mr. M.C.Bhoot, for the respondents.

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By this petition for writ challenge is given to an order dated 1.11.1993 passed by the Secretary, Shri Lal Bahadur Shastri Shikshan Sansthan, Paota, Jodhpur. By the order aforesaid services of the petitioner were terminated w.e.f. 30.11.1993.

It is not in dispute that a petition for writ (SBCivil Writ Petition No.5777/1993, Kamlesh Kumar Trivedi v. State of Rajasthan & Ors.) filed by a co-employee of the petitioner, based on similar facts and legal contentions, has already been accepted by this Court vide judgment dated 20.7.2004. By the judgment referred above this Court while setting aside the order terminating Shri Kamlesh Kumar Trivedi from service ordered for his reinstatement with continuity of service.

The contention of counsel for the respondents is that this Court in the case of Kamlesh Kumar Trivedi (supra) while examining validity of the

order impugned erroneously reached at the conclusion that the order was punitive in character and could not have been issued without holding an appropriate and fair inquiry for the charges levelled against the employee concerned.

It is empathetically asserted by counsel for the respondents that the learned Court in the case of Kamlesh Kumar Trivedi (supra) has not taken into consideration the law laid down by Hon'ble Supreme Court in the case of Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another, [(2002)1 SCC 520], wherein it was held that “one of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld”.

Heard counsel for the parties.

I have thoroughly considered the facts of the case and also compared with the facts of the case of Kamlesh Kumar Trivedi (supra). As a matter of fact

the orders impugned in both the cases arose as a consequent to same facts and as such the contentions to challenge the orders impugned in both the matters are same. This Court in the case of Kamlesh Kumar Trivedi (supra) after dealing with all available necessary facts and legal contentions held as under:-

> "The facts emanating from the record and the terms of order leave no room of doubt in mind that the termination is founded on the ground stated in the order, and the order is punitive in character and could not have been issued without holding an appropriate and fair enquiry for the charges levelled against the petitioner. In fact, no charge-sheet has ever been issued to the petitioner, which is also apparent from the fact that in the order of suspension, respondent No.3 not specific about whether he is suspended in the contemplation of enquiry or an enquiry is pending.
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> The law is well settled that while the circumstances which may furnish the motive for termination of service on account of unsatisfactory conduct of the incumbent during the probation period may not be liable to be reviewed judicially as a punitive order, but if those grounds become foundation of the termination order, the order becomes punitive and unless it conforms to the principle of fair play and is made after giving an opportunity to the petitioner to defend himself against the

> alleged charge, the order cannot be sustained.
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> In view of my above conclusion, the impugned order dated 3.11.93 is quashed with all consequential benefits to the petitioner. All the incidents appear to be trivial and stale and, therefore, no useful purpose would be served by permitting the fresh enquiry now in those matters."

This Court in the case of Kamlesh Kumar Trivedi (supra) reached at the conclusion that foundation for terminating the petitioner from service was misconduct and, therefore, the order impugned was punitive. I do not find any just reasons to deviate from the reasons and conclusions given by this Court under the judgment dated 20.7.2004 in SBCivil Writ Petition No.5777/1993. The law of precedents and judicial discipline also require to maintain uniformity while passing orders in similar cases.

Accordingly, for the reasons given by this Court in the case of Kamlesh Kumar Trivedi (supra) this petition for writ deserves acceptance, hence the same is allowed. The order dated 1.11.1993 is quashed. The petitioner shall be reinstated with continuity of service and arrears of salary including for the period he has remained under suspension be paid within a period of four months. On failure to pay the arrears within the period of four months, it shall entail

interest @ 9% p.a. with effect from the date of filing of the writ petition.

There shall be no order as to costs.

(GOVIND MATHUR),J.

Kkm/ps.